

Off. of Spec. Educ. and Rehab. Services, Education

§ 303.510

deductibles) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of §§ 303.520 and 303.521.

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10)–(12), 1437(b), 1438, 1439(a), 1440)

USE OF FUNDS

§ 303.501 Permissive use of funds by the lead agency.

Consistent with §§ 303.120 through 303.122 and §§ 303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds—

(a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§ 303.510 through 303.521);

(b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;

(c)(1) To provide FAPE as that term is defined in § 303.15, in accordance with part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;

(2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and § 303.211;

(d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with part B of the Act, to children with disabilities from their third birthday (pursuant to § 303.211) until those children enter, or are eligible under State law to enter, kindergarten; and

(e) In any State that does not provide services under § 303.204 for at-risk infants and toddlers, as defined in § 303.5, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk

infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of—

(1) Identifying and evaluating at-risk infants and toddlers;

(2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and

(3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

(Authority: 20 U.S.C. 1435(a)(10)–(12), 1437(b), 1438)

PAYOR OF LAST RESORT—GENERAL PROVISIONS

§ 303.510 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§ 303.520 and 303.521).

(b) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health services, as defined in § 303.16 (but not medical services), functions of the child find system described in §§ 303.115 through 303.117 and §§ 303.301 through 303.320, and evaluations and assessments in § 303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, *et seq.* (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to part C of the Act.

(Authority: 20 U.S.C. 1435(a)(10)(B), 1437(a)(2), 1440(a), 1440(c))

§ 303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.

(a) *General.* Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure—

(1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and

(2) Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.

(b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:

(1) State law or regulation;

(2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

(3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.

(c) *Procedures for resolving disputes.* (1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

(2) The method must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made—

(i) The Governor, Governor's designee, or lead agency must reassign the financial responsibility to the appropriate agency; and

(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

(d) *Delivery of services in a timely manner.* The methods adopted by the State under this section must—

(1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

(2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under § 303.520 regarding the use of insurance to pay for part C services.